

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBBY M. ROBERTSON and U.S. POSTAL SERVICE,
POST OFFICE, Edmund, Okla.

*Docket No. 96-2492; Submitted on the Record;
Issued April 22, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she has greater than a 17 percent permanent impairment for loss of use of her left lower extremity, for which she received a schedule award.

On March 15, 1989 appellant, a 35-year-old letter carrier, injured her low back and left hip while removing a tray of mail.

On June 14, 1989 appellant injured her lower back and left leg when her seat moved while she was making a turn in her vehicle. Appellant was placed on total disability for intermittent periods and she was released to return to work on limited duty. The claim was ultimately accepted for lumbar strain, spondylolysis and herniated nucleus pulposus. The record indicates that appellant returned to limited duty on June 24, 1995.

On March 11, 1996 appellant consulted Dr. Griffith C. Miller, a specialist in family practice, who evaluated her for an impairment rating. Dr. Miller noted that appellant underwent a diskogram on December 5, 1991 which revealed the presence of degenerative disc disease at L5-S1, which was subsequently confirmed by a computerized axial tomography scan. With regard to the extent of appellant's impairment to her left leg, Dr. Miller stated:

"Due to the radiculopathy involving the left leg, according to the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition)], page 130, [T]able 83, the maximum impairment that she can receive for radiculopathy involving L3, L4, L5 and S1 would be 131 percent. However, one has to multiply this by [T]ables 11 and 12, page 48, [T]able 11 classified as to percentage of impairment due to sensory deficit which I feel is 50 percent and [T]able 12, which is motor deficit which I feel is 6 percent. Therefore, she would have 65 percent permanent partial disability to the left leg as a result of the radiculopathy."

On March 22, 1996 appellant filed a Form CA-7 claim for a schedule award.

In a May 1, 1996 memorandum, an Office of Workers' Compensation Programs medical adviser reviewed Dr. Miller's findings and, applying the standards outlined in the A.M.A., *Guides*, determined that appellant had a total of 17 percent impairment in her left lower extremity. In arriving at this figure, the Office medical adviser calculated that, based on Table 83, unilateral spinal nerve root impairment affecting the lower extremity at page 130 of the A.M.A., *Guides*, the maximum percentage for, sensory deficit was 5 percent at the L3 level of the spine, with a maximum for strength deficit of 20 percent; at L4, a maximum sensory deficit of 5 percent and a maximum strength deficit of 34 percent; at L5 a maximum sensory deficit of 5 percent and a maximum strength deficit of 37 percent; and at S1 maximum sensory deficit of 5 percent and a maximum strength deficit of 20 percent. The Office medical adviser then applied Table 11 to grade appellant's sensory deficit, noting that a 50 percent sensory deficit as noted by Dr. Miller was a grade 3 impairment classification. This, when multiplied by 50 percent of the maximum percentage allowed for sensory loss (50 percent x 5 percent) resulted in 3 percent impairment allowable for L3, L4, L5 and S1. Applying the Combined Values Chart, the total impairment for sensory loss of the left lower extremity was 12 percent.

With regard to the extent of impairment derived from appellant's strength deficit, the Office medical adviser applied a 6 percent for motor deficit as was noted by Dr. Miller from Table 12, page 49. For the L3 motor deficit, 6 percent grade when multiplied by the maximum allowable motor deficit of 20 percent resulted in 1 percent impairment; at the L5 level, a 6 percent grade multiplied by the maximum allowable motor deficit of 34 percent results in a 2 percent impairment; at the L5 level, a 6 percent grade multiplied by the maximum allowable motor deficit of 37 percent results in a 2 percent impairment; and at the S1 level, and a 6 percent grade multiplied by the maximum allowable motor deficit of 20 percent results in 1 percent impairment. The Office medical adviser combined the motor deficit impairment values to find a total impairment for strength deficit to be 6 percent of the left lower extremity. Combining the 12 percent sensory deficit and 6 percent motor deficit impairments calculated above, the Office medical adviser concluded that appellant had a total of 17 percent impairment of the left lower extremity. The Office medical adviser commented that the 48 percent difference between his impairment rating and that which Dr. Miller calculated was based on a difference in interpretation and mathematical application of the tables and precepts of the fourth edition of the A.M.A., *Guides*.

On July 22, 1996 the Office granted appellant a schedule award for a 17 percent permanent impairment of her left lower extremity for the period March 11, 1996 to February 16, 1997, for a total of 48.96 weeks of compensation.

The Board finds that appellant has no greater than a 17 percent permanent impairment of her left lower extremity, for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁴

In the instant case, the Office determined that appellant had a 17 percent permanent impairment of her left lower extremity based on the findings of the Office medical adviser who determined the total impairment rating by calculating the unilateral spinal nerve root impairment affecting appellant's left lower extremity as contributed by impairment of the L3, L4, L5 and S1 nerve roots. The Office medical adviser set forth his findings as to the maximum percentage loss of function allowed due to sensory and strength deficits and the grading of impairment based on Dr. Miller's findings on examination. He set forth his calculation for pain or sensory deficit and motor deficit in appellant's left lower extremity, and then applied the combined values chart to arrive at the total percentage of impairment to appellant's left lower extremity. While Dr. Miller found a 65 percent impairment, the Board notes that his calculations do not conform with the protocols set forth in the A.M.A., *Guides* for determining the sensory and motor loss of each nerve root prior to use of the Combined Values Chart.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 17 percent impairment for loss of use of her left lower extremity for which she received a schedule award. Appellant has failed to provide probative, medical evidence that she has greater than the 17 percent impairment awarded.

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

The decision of the Office of Workers' Compensation Programs dated July 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 22, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member